

## REMARKS

This Application has been carefully reviewed in light of the Office Action mailed November 16, 2007. At the time of the Office Action, Claims 1-5, 7, 8, 10, 11, 13-23 and 26 were pending in this Application and were rejected. Claim 4 was also objected to. Claims 6, 9, 12, 24 and 25 were previously cancelled without prejudice or disclaimer. Claims 4 and 5 have been cancelled without prejudice or disclaimer. Claims 1, 2, 7, 10, 14-15, 19, and 23 have been amended to further define various features of Applicant's invention. Applicant respectfully requests reconsideration and favorable action in this case.

### **Claim Objections**

Claim 4 was objected to by the Examiner under 37 CFR §1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant cancels claim 4 without prejudice or disclaimer.

Claim 2 was objected to because of informalities. Applicant amends claim 2 to overcome this objection and respectfully requests full allowance of claim 2 as amended.

### **Rejections under 35 U.S.C. §112**

Claim 5 was rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant cancels claim 5 without prejudice or disclaimer.

### **Rejections under 35 U.S.C. §103**

Claim 1-5, 7, 8, 10, 11, 13-23 and 26 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,602,248 issued to Sharps et al. ("Sharps") in view of the teaching of U.S. Patent No. 3,659,607 issued to Banko ("Banko"). Applicant respectfully traverses and submits the cited art combinations, even if proper, which Applicants does not concede, does not render the claimed embodiment of the invention obvious.

Initially, Applicant notes that neither Sharps nor Banko, alone or in combination, discloses the step of independently advancing an optic fiber through an access device comprising a needle and into a disc. While Sharps discloses the use of an ancillary needle through which an optic fiber may be advanced, it lacks any teaching of independently advancing an optic fiber into a disc through a primary needle that also may provide access for another device. Banko does not

teach the use of a needle as an access device at all, but rather only discloses a manner of making an incision in a body structure and then independently advancing an instrument through the incision for viewing of the body structure. Applicant respectfully submits that the Banko reference, in combination with Sharps, does not teach every element of claim 1 pertaining to the use of a specific access device—a needle—and to the step of independently advancing an optic fiber therethrough and subsequently into a disc.

Claim 1 has been amended to further define the claimed invention, and now recites that the step of viewing the interior of the disc using one or more of the optic fibers occurs prior to the step of treating the disc (and thereby prior to the step of activating the treatment device), and that the step of viewing the interior of the disc occurs in order to verify a damage location within the disc and to assess the extent of damage within the disc. Applicant respectfully submits that Sharps does not disclose a step of viewing the disc prior to treating the disc and in order to verify the location of damage within the disc and to assess the extent of damage within the disc. Rather, Sharps discloses utilizing an optical fiber in order to monitor the interior of the disc at least during the treatment of a disc and to monitor the position of the treatment device within the disc, in contrast to viewing the disc prior to beginning a treating step in order to verify and assess. Applicant respectfully submits that neither Sharps nor Banko disclose all the elements of claim 1 as amended, as neither reference specifically or inherently discloses viewing the disc prior to treatment in order to verify the location of damage and to assess the extent of damage. As such, claim 1 as amended is in condition for allowance, and Applicant respectfully requests withdrawal of the rejection.

Claims 2-3, 7-8, 10-11, 13-23, and 26 depend either directly or indirectly from claim 1. Applicant repeats and hereby incorporates the above remarks made with respect to amended claim 1. For at least these reasons, Applicant respectfully submits that claims 2-3, 7-8, 10-11, 13-23, and 26 are in condition for allowance and request withdrawal of the rejection.

**Information Disclosure Statement**

Applicant encloses an Information Disclosure Statement and PTO Form 1449, with copies of the references for the Examiner's review and consideration.

### CONCLUSION

Applicant has made an earnest effort to place this case in condition for allowance in light of the amendments and remarks set forth above. Applicant respectfully requests reconsideration of the pending claims.

The Commissioner is hereby authorized to charge \$180 for the IDS and any additional fees or credit any overpayment to Deposit Account No. 50-0359 of ArthroCare Corporation in order to effectuate this filing.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicant's attorney at 512.358.5925.

Respectfully submitted  
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Date: 2/13/08

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Enclosure: 1) Information Disclosure Statement and PTO Form 1449